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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,355	01/23/2001	Stephen Philip Mann	GJE-13XC1D1C1	3294

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EXAMINER

HENDRICKS, KEITH D

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/21/2001

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/767,355

Applicant(s)

Examiner

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-5 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-5 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☒ All ☐ Some\* ☐ None of the:

- ☐ Certified copies of the priority documents have been received.

☒ Certified copies of the priority documents have been received in Application No. 09/125,212; 09/637,459

- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms "increase" and "performance-increasing", in claim 1, are relative terms which renders the claim indefinite. The term "increase" (or "increasing") is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Further, it is unclear as to what "performance" is being enhanced or increased.

Finally, it is unclear as to what "amount" of a microorganism recited in claim 1, would provide a "performance-increasing" level, and what "amount" would exceed, or not meet, this level.

### *Claim Rejections - 35 USC § 102 and 103*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

i) Claims 1 and 3-4 are rejected under 35 U.S.C. 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over, Lewandowski et al. (US PAT 5,811,289).

Lewandowski et al. disclose the lactic-acid bacteria fermentation treatment of biological waste for the production of a biomass which is used to produce an animal feed. This biomass has an "enhanced nutritional value useable as animal feed" (col. 1), and said feed can be used "for bovids [i.e. bovine, cattle, cows], crustaceans and the like" (col. 11, line 63). "Pigs appreciate this biomass when used as animal feed" (col. 14, line 61-62). At column 6, as well as in the claims, *Lactobacillus kefir* is recited as a preferred lactic-acid bacteria strain to use in the biomass.

With regard to claim 3, while the reference does not specifically recite the mode of administering the feed to cattle, it does state that such feed is used for bovids, and that in the method of feeding animals, "Pigs appreciate this biomass when used as animal feed." Thus, in the alternative, it would have been obvious to one of ordinary skill in the art to have utilized the animal feed containing *L. kefir* to feed animals such as poultry and cattle, if such was not already specifically conveyed within the reference.

ii) Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bodenrader (US PAT 4,264,448).

Bodenrader discloses a method for treating manure by adding a lactic-acid bacteria such as *Lactobacillus kefir* (mid-col. 4), "which treatment renders the manure acceptable either as an animal feed, [or] as a fertilizer" (col. 2, lines 24-28). The reference recognized "the need to treat animal waste... with modification as a feed for cattle" (col. 1, ln. 57-59), and solved such by their

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invention. "The final product... will contain a mixture of ammonium lactate and harmless lactobacilli which is naturally found in the intestinal tract of cattle as well as in the manure" (col. 2, lines 50-54).

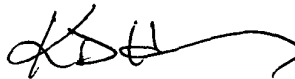
While the reference does not specifically recite the mode of administering the feed to pigs, poultry or cattle, it does state that such a product was needed "as a feed for cattle". Thus, in the alternative, it would have been obvious to one of ordinary skill in the art to have utilized the animal feed containing *L. kefir* to feed animals such as poultry, pigs and cattle, if such was not already specifically conveyed within the reference.

#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached at (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
KEITH HENDRICKS  
PRIMARY EXAMINER